IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9134 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BHARATBHAI KALUBHAI LALTUKA C/O JAYANTIBHAI UMRANIA'S - Petitioner(s)

Versus

GUJARAT AGRO INDUSTRIES CORP. LTD. & 2 - Respondent(s)

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Appearance :

MR CHETAN K PANDYA for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MS PJ DAVAWALA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
MR LB DABHI, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 10/01/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under

Article 226 of the Constitution of India, seeking directions to the respondents to regularise the services of the petitioner as Assistant Chemist in respondent No.1 Corporation. The petitioner has also sought for the direction to the respondents not to terminate the services of the petitioner as Assistant Chemist with effect from 1.11.1995.

2. The notice was issued by this Court on 20.10.1995 and by way of ad interim relief the respondents were directed that the post in question will not be regularly filled in till the returnable date. The said interim relief was thereafter extended from time to time. On 10.1.1996 this Court has admitted the petition and rule was issued. The Court has observed in its order dated 10.1.1996 that the ad interim relief as prayed for by the petitioner could not be granted. The Court has considered the

affidavit in reply and observed that the services of the petitioner came to be terminated in past on the basis of the appointment order and terms and conditions of the said order. Subsequently, however, he was given appointment on purely humanitarian ground and then also since his work was found to be “not satisfactory” his services came to be terminated. It was also stated that the post in question was required to be filled in by reserved category and it was an admitted position that the petitioner did not belong to reserved category. The Court, therefore, vacated the ad interim relief which was granted earlier.

3. It is the case of the petitioner that the respondent No.1 has published an advertisement on 13.7.1991 in “Gujarat Samachar” inviting applications for the recruitment to various

posts including the post of 'Refinery Chemist'. As per the said advertisement there were 4 posts of Refinery Chemist vacant, out of which 2 posts were in the reserved category and 2 posts were general category. The petitioner had applied for the said post and the petitioner was invited for interview to be held on 14.8.1991. It was the case of the petitioner that he was possessing the requisite qualification and work experience for the said post. He was offered temporary post at a consolidated salary of Rs.1700/- p.m., and he has joined the said post pursuant to the appointment order issued on 6.12.1991. It is also the case of the petitioner that the services of the petitioner were extended from time to time. Thereafter, on 29.11.1994 the services of the petitioner were discontinued by office order dated 29.11.1994. Thereafter, appointment order was issued on 16.12.1994,

granting appointment upto 31.3.1995 and the said period was extended till 31.7.1995.

4. Since the petitioner was apprehending termination of his service he has filed Special Civil Application No.6455/1995 before this Court. Status quo with regard to service condition was granted. The said petition was withdrawn, as the respondent issued letter dated 31.3.1995 extending the services of the petitioner as Assistant Chemist upto the period of 31.10.1995. Since the petitioner was again apprehending his termination with effect from 1.11.1995, the present petition is filed on 18.10.1995 and as stated earlier, this Court has not granted ad interim relief nor any further extension letter was issued to the petitioner. The petitioner's services came to be terminated with effect from 1.11.1995.

5. Mr.Chetan Pandya, learned advocate appearing for the petitioner submitted that all through out the service of the petitioner, the petitioner has been promised from time to time that the petitioner will be made permanent employee of the respondent Corporation and on that basis only the petitioner has accepted extension of services from time to time. He has, therefore, submitted that the respondent Corporation may be directed to act as per the assurances given. Mr.Pandya further submitted that the petitioner was well qualified as B.Sc. (Chemistry) from Gujarat University. He has further submitted that the petitioner was made a scapegoat on account of internal politics and made to accept the temporary post offered by the respondent Corporation. He has further submitted that when the petitioner has applied for the post of Assistant Chemist in response to the advertisement, another person, namely,

H.C.Patel, had also applied alongwith the petitioner. The said H.C.Patel was made permanent in the pay scale of Rs.1400-2600 and is presently continuing as such with the respondent Corporation. The petitioner was hostilely discriminated and the petitioner has not been made permanent in the grade as that of Mr.H.C.Patel. Mr.Pandya further submitted that the post at which the petitioner was working was a permanent post and hence also the respondent Corporation ought to have continued the petitioner in the said post. It is further submitted that even the post in the reserved category was vacant till date and hence there was requirement of person like the petitioner for the respondent Corporation. Mr.Pandya further submitted that the petitioner has to maintain his family and termination of his services has resulted into starvation, not only for him but for his family and hence the

petitioner's services could not have been terminated in this fashion. Lastly, Mr.Pandya submitted that from October, 1985 to October, 1991 the petitioner rendered his services to the respondent Corporation in reserved category and at no point of time any dissatisfaction was pointed out by the respondent Corporation and hence the petitioner's services could not have been terminated by the respondent Corporation. He has also submitted before the Court that the termination of the petitioner was contrary to law and hence this Court should exercise jurisdiction under Article 226 of the Constitution of India directing the respondent Corporation to absorb the petitioner on regular establishment.

6. An affidavit in reply is filed on behalf of the respondent Corporation. Ms.P.J.Dawavala, learned advocate appearing for the respondent

Corporation on the other hand has strongly opposed this petition and submitted on the basis of the affidavit in reply that the petitioner is graduate in chemistry and he did not possess sufficient work experience suited to the post and hence he was not selected in the interview and the staff selection committee did not find him fit for the post of Refinery Chemist in the pay scale of Rs.1640-2900. The petitioner was, therefore, offered a temporary appointment on probation of one year on consolidated salary of Rs.1700/-. She has further submitted that the Corporation has made it very clear that the said appointment was purely temporary and that at the completion of the probation period he might not be offered post on regular pay scale. It is, therefore, not correct to state that as per the conditions of the appointment order, the Corporation was required to offer him regular post at the

conclusion of the probation period. Ms.Dawavala further submitted that the petitioner was given temporary fixed time period appointments subject to the conditions that his services were liable to be terminated at any time without notice since the post is required to be filled up from reserved quota candidate (SC/ST) and through employment exchange. She has further submitted that the petitioner has agreed these conditions by returning duplicate order duly signed by him. Even with regard to Mr.H.C.Patel, whose instance was quoted by the petitioner in his petition Ms.Dawavala submitted that he was appointed as Asstt.Chemist at Pesticides Unit, Gondal on 19.4.1985 and subsequently he was promoted to the post of Chemist on 21.3.1992. She has further submitted that on exigency of work, his services were transferred to Solvent Extraction Unit, Bareja, Dist.Ahmedabad from

12.12.1994 and, thereafter on exigency of work having receded, his services were transferred back to his substantive post of Chemist at Pesticides Unit, Gondal from 20.11.1995. Ms.Dawavala has also invited attention of the Court to consent letter dated 3.10.1991 given by the petitioner, wherein it was stated that the petitioner was willing to work at the said post. It was also made it very clear by the Corporation that the temporary post which was offered to him was reserved for ST Candidate and on getting the regular candidate his services would be terminated. She has further submitted that from the very beginning, there was clear understanding that the post on which he has to work was temporary and he has to leave that post on regular candidate being made available. She has further submitted that the petitioner, while accepting the appointment, was agreed to all these conditions and reported

to duty on 13.12.1991. She has further submitted that after the petitioner joined the services, his work was not found satisfactory and he was not found suitable for the post of Refinery Chemist, and therefore, his probation period was not extended and thereafter his services came to be terminated. She has further submitted that after termination of the petitioner's service, several representations were made and the said representations were considered by the Corporation sympathetically only on humanitarian ground and further extension was given. However, after 31.10.1995 the petitioner's services were not required by the Corporation and hence his service came to end.

7. During the tenure of the petitioner it was made clear to the petitioner all through out that his services were temporary and that post

was kept for SC/ST candidate and that there was Government ban in further recruitment. Upto this date the petitioner continued to hold that post on the existing terms and conditions which were offered to him by the Corporation. She has, therefore, submitted that the petitioner cannot claim any vested right in the said post and the prayer which is made in the present petition for regularisation or against the termination cannot be granted. She has further submitted that at the time of discontinuance of service there is no question of issuance of notice or granting any compensatory benefits as it was not permanent post and it was purely stop-gap arrangement and temporary and hence no benefit can be claimed by the petitioner. She has also denied the contention raised by the petitioner with regard to principle of promissory estoppal. First of all, the respondent Corporation has not given any

promise. Even if it is assumed that such promise was given then it was not possible for the management to give any commitment in view of the fact that the post was reserved for SC/ST candidate and there was Government ban. Considering all these aspects of the matter, she has submitted that the relief prayed for by the petitioner in this petition cannot be granted.

8. In support of her submission she relied on decision of Hon'ble Supreme Court **in the case of State of Punjab and others vs. Sukhwinder Singh reported in (2005)5 Supreme Court Cases 569**, wherein it is held that where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for

the purpose of imposing punishment. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct, and overall suitability for the job. A probationer is on test and a temporary employee has no right to the post.

9. She has further relied on the decision of Hon'ble Supreme Court **in the case of Registrar, High Court of Gujarat vs. C.G.Sharma, reported in (2005) 5 Supreme Court Cases 132**, wherein it is held that even if the period of two years of probation prescribed under Rule 5(4) of the Rules expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the rules the

confirmation order can be passed only if there is vacancy and work is found to be satisfactory, which are the pre-requisite or pre-conditions for confirmation. The language of the rules itself exclude any chance of giving deemed or automatic confirmation. The probationer remains a probationer unless he has been confirmed on the basis of the work evaluation. Under the relevant rules under which the respondent was appointed as Civil Judge, there is no provision for automatic or deemed confirmation and/or deemed appointment on regular establishment or post, and therefore, the contention that the respondent's services were deemed to have been continued on the expiry of the probation period, is misconceived.

10. Mr.Pandya, learned advocate appearing for the petitioner has placed affidavit in rejoinder on

record. However, Ms.Dawavala has strongly objected to the production of such affidavit in rejoinder, as the affidavit in reply was filed long back on 20.12.1995. After more than 10 years the petition is taken up for final hearing and affidavit in rejoinder is tendered. It was submitted that same could not be taken into consideration. Though there is substance in the contention raised by Ms.Dawavala, in the interest of justice the contentions raised in the said affidavit in rejoinder are also taken note of. In affidavit in rejoinder all the contentions and submissions, raised in the petition, are reiterated. It was stated that till the petitioner's service was terminated, the petitioner was never informed that the petitioner's service as Refinery Chemist was not satisfactory to the expectation of the respondent Corporation. It is further

submitted that no memo or notice was issued to the petitioner even to improve his performance. On the contrary, on completion of the period of first appointment order he was given a second appointment order with hopes and assurances that his service will be regularised. It was further stated in the said affidavit in rejoinder that no other candidate belonging to the SC/ST, who was selected after following the recruitment procedure and/or through employment exchange and, therefore, there was no question of terminating petitioner's service. It is further stated that the appointment order referred to in para-6 of the affidavit in reply, under Clause-4 it was mentioned that the petitioner may be offered regular post on completing successfully the training period. However, his training period was being extended time and again and was not given the regular post. It was further

contended that the respondent Corporation deliberately and willfully had given artificial brake with an intention to see that the petitioner may not get the benefit of regularisation. It was further submitted that the termination of the petitioner's service was termination simplicitor and it was by way of a punishment. It was further contended that the respondent No.1 being instrumentality of the State has to act as model employer and ought not to have exploited the petitioner. Lastly, it was submitted that the petitioner was appointed with a rider that he may be replaced by any candidate belonging to SC/ST. However, no such candidate has ever replaced the petitioner and, therefore the contention that the petitioner was appointed on the post of Reserved Quota is required to be rejected.

11. Ms.Dawavala further submitted that looking to

the present condition of the respondent Corporation, which is financially weak and many of its units have been closed, the petitioner cannot be absorbed by the respondent Corporation. She has further submitted that the respondent Corporation has offered VRS to its employees and many of the employees opted for this VRS. In this view of the matter, it is not possible for the respondent Corporation to absorb the petitioner.

12. After having heard the learned advocates for the respective parties and after having gone through the pleadings of the parties contained in the petition, affidavit in reply as well as affidavit in rejoinder and after having gone through the authorities cited, the Court is of the view that the petitioner was appointed purely on ad hoc basis and it was a temporary appointment. It is true that the period of his

temporary appointment was extended from time to time. He was not, however, confirmed on the said post and his service was never regularised. Moreover, his appointment was made on the reserved post and it was made clear that as and when reserved candidate would be available he has to vacate the said post. Simply because the reserved candidate was not appointed, this fact, by itself, would not confer any right on the petitioner to claim any permanent posting, more particularly, when the respondent Corporation is not in sound financial condition and many of its units are virtually closed. In such a situation, the Court cannot direct the respondent Corporation to absorb the petitioner in its establishment on regular basis. Prayers made by the petitioner in the present petition are, therefore, not granted. It is however, clarified that if in the future, if any

appointment is to be made on the post in question, the case of the petitioner may be considered sympathetically and in accordance with law.

13. Subject to the aforesaid directions and observations, this petition is accordingly disposed off. Rule is discharged without any order as to costs.

(K. A. PUJ, J.)

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